

Notice of Allowability

Application No.

10/603,956

Examiner

S. Mark Clardy

Applicant(s)

ARMBRUSTER ET AL.

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to IDS filed July 16, 2004.
2. ☒ The allowed claim(s) is/are 1-58.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 7/16/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

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Claims 1-58 are pending in this application.

Applicants' claims are drawn to selective synergistic herbicidal compositions and methods comprising the following components (claims 1-43: in amounts to provide the indicated application rates in lbs/acre):

Claims 50-55, 13-22, 35-43 recite:

Quinclorac (0.1 – 1)

A selective protox (protoporphyrinogen oxidase or PPO) inhibitor¹ (0.005 – 0.06)

Claims 44-49, 56-58, 1-12, 23-34 recite the above components, plus:

A selective auxinic agent². (0.15 - 2).

Claims 1-58 are allowed.

The following is an examiner's statement of reasons for allowance.

The following references are cited herein: Anderson (US 5,877,117) and Jimoh (US 6,689,719).

Anderson et al teach the potentiation of herbicidal compositions comprising quinclorac and auxin transport inhibitors (abstract), specifically phenylureas (column 1, and claim 1). Other herbicides are disclosed as being potentiated by the auxin transport inhibitors, including auxinic growth regulators (col 2, lines 55-60), and cell membrane disruptors such as oxyflurfen (col 3, lines 58-60). Thus, the herbicidal components disclosed herein were known, as taught in Anderson et al, or as evidenced by their designation using a common name.

¹ Claim 8: carfentrazone, sulfentrazone, pyraflufen, flumioxazin, fluthiacet, oxyfluorfen

² Claim 12: phenoxy, benzoic, pyridine, quinolinecarboxylic acid compounds. See list on p. 5: 2,4-D, 2,4-DP, 2,4-DB, MCPA, MCPP, MCPB, 2,4,5-T, 2,3,6-TBA, dicamba, TCA, methane arsonic acid (MAA), etc.

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Jimoh teaches stable liquid microemulsion compositions comprising glyphosate and carfentrazone-ethyl (abstract), optionally comprising an additional herbicidal component in the oil phase (columns 6-8) such as quinclorac (col 7, line 21) or PPO inhibitors (col 8, lines 11-28).

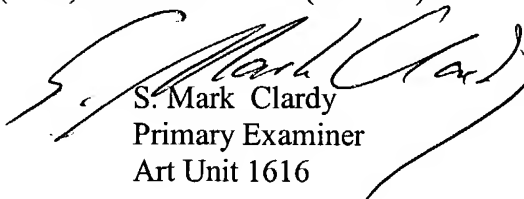
While it is *prima facie* obvious to combine two or more herbicidal agents in order to make another herbicidal composition³, applicants have presented data in the specification which demonstrates unexpected synergistic effects for the combination of quinclorac with more than one PPO inhibiting herbicide.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


S. Mark Clardy
Primary Examiner
Art Unit 1616

September 29, 2004

³ It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition that is to be used for the very same purpose; the idea of combining them flows logically from their having been individually taught in the prior art. In re Kerkhoven, 205 USPQ 1069.